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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 ANTHONY EUGENE LEWIS,) CASE NO. C10-0267-RSL
09 Plaintiff,)
10 v.) REPORT AND RECOMMENDATION
11 ELDON VAIL, et al.,)
12 Defendants.)
13 _____)

14 Plaintiff Anthony Eugene Lewis, who is currently incarcerated at the Monroe
15 Correctional Complex–Special Offender Unit (“MCC-SOU”), has filed an application to
16 proceed *in forma pauperis* (“IFP”) with a civil rights action brought under 42 U.S.C. § 1983 and
17 various other statutes. (Dkts. 1, 1-2.) The Court recommends DENYING plaintiff’s
18 application to proceed IFP based on the three-strikes rule of 28 U.S.C. § 1915(g), and directing
19 him to pay the \$350 filing fee in order to proceed with his complaint.

20 A prisoner may not proceed IFP in a civil action if he or she has, on three or more prior
21 occasions, brought civil actions that were dismissed for failure to state a claim upon which
22 relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

01 See 28 U.S.C. § 1915(g). Plaintiff has brought at least four federal civil-rights actions that
02 were dismissed for failure to state a claim upon which relief may be granted, and three of these
03 were specifically determined to be “strikes” pursuant to § 1915(g). See *Lewis v. King County*,
04 C09-1039-RSL (W.D. Wash., dismissed Feb. 8, 2010) (referring to § 1915(g)); *Lewis v. Vail*,
05 C09-5047-EFS (E.D. Wash., dismissed Feb. 3, 2010) (referring to § 1915(g)); *Lewis v. King*
06 *County*, C01-1246-JCC (W.D. Wash., dismissed Jan. 23, 2002) (referring to § 1915(g)); *Lewis*
07 *v. King County*, C01-1195-MJP (W.D. Wash., dismissed Nov. 27, 2001) (not referring
08 specifically to § 1915(g)); see generally *O’Neal v. Price*, 531 F.3d 1146, 1152 (9th Cir. 2008)
09 (holding that an IFP action is “brought” for purposes of imposing § 1915(g) strikes “when he
10 submits a complaint and request to proceed in forma pauperis to the court”). Accordingly,
11 plaintiff appears to have at least four strikes under § 1915(g) and may not proceed unless he can
12 show that he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g); see
13 *Andrews v. King*, 398 F.3d 1113, 1120 (9th Cir. 2005) (holding that once the prisoner has been
14 placed on notice by the district court of potential disqualification for IFP status under § 1915(g),
15 “the prisoner bears the ultimate burden of persuading the court that § 1915(g) does not preclude
16 IFP status”).

17 Plaintiff alleges that defendants are conducting unconstitutional religious
18 discrimination against his practice of voodoo because they decline to confine him to his cell in
19 lieu of requiring him to participate in education and work programs, transferred him to
20 MCC-SOU instead of keeping him within the general prison population, and have retaliated
21 against him for filing *Lewis v. Vail*, C09-5047-EFS (E.D. Wash., dismissed Feb. 3, 2010).
22 (Dkt. 1-2, at 9–13.) In a proposed motion for injunctive relief and appointment of counsel,

01 plaintiff demands immediate release from MCC-SOU into a single-person cell in the general
02 population at Monroe Correctional Complex–Washington State Reformatory (“MCC-WSR”).
03 (Dkt. 1-3, at 17.) Plaintiff contends that defendants have erroneously diagnosed his belief in
04 voodoo as a mental illness, and that their failure to allow him to be housed in a single-person
05 cell in the general prison population constitutes cruel and unusual punishment. (Id., at 3–4.)
06 Plaintiff contends that he “has been threatened with irreparable injury of involuntary
07 medication in order to get plaintiff to comply with any mental health treatment.” (Dkt. 1-2, at
08 5; *see* Dkt. 1-3, at 7.)

09 The Court recommends that plaintiff’s IFP application be denied because it finds that
10 plaintiff has not shown that he is under imminent danger of serious physical injury. Plaintiff
11 alleges that he faces the imminent threat of being medicated against his will but fails to support
12 this conclusory allegation with any facts. Plaintiff does not specify who made this threat,
13 when, and in what context. Plaintiff does not suggest that defendants have ever forced him to
14 take medications. He does not allege that defendants have decided to medicate him
15 involuntarily, that such decision is pending, or that such a decision would or could be made
16 without affording him due-process protections. Plaintiff filed numerous emergency
17 grievances with prison officials, but according to his own account of the facts, these grievances
18 center upon defendants’ failure to accept that plaintiff’s refusal to enter work and educational
19 programs is based upon a sincere religious belief in voodoo, and upon plaintiff’s assertion that
20 he should not be housed in a prison facility that treats offenders with mental-health issues.
21 (*See, e.g.*, Dkt. 1-3, at 7–9.) If plaintiff had been transferred from prison to a mental hospital,
22 such a decision would implicate a liberty interest because placement in a mental hospital is “not

01 within the range of conditions of confinement to which a prison sentence subjects an
02 individual.” *Vitek v. Jones*, 445 U.S. 480, 493 (1980). Here, however, plaintiff is confined in
03 a prison facility that has a special capacity to treat inmates with mental-health issues and seeks
04 to be released to a different prison unit within the same correctional complex. There is no right
05 to incarceration in the prison of one’s choice. *See Olim v. Wakinekona*, 461 U.S. 238, 245
06 (1983). There is no indication that plaintiff is required to participate involuntarily in
07 mental-health treatment. In fact, he states that, after being interviewed by an MCC-SOU
08 psychiatrist, plaintiff “signed the mental health authorization form refusing to receive any such
09 mental health treat[ment].” (Dkt. 1-3, at 7; see Dkt. 1-2, at 5.) Plaintiff’s speculative and
10 generalized fears of harm based upon conclusory allegations of unspecified persons threatening
11 to medicate him involuntarily on some unspecified date—and upon the mere fact of being
12 housed in a shared cell in MCC-SOU—do not persuade the Court that he is in imminent danger
13 of serious physical injury.

14 The Court recommends DENYING plaintiff’s application to proceed IFP (Dkt. 1), and
15 directing him to pay the \$350 filing fee within thirty (30) days of the date of the Order adopting
16 this Report and Recommendation. The Clerk is directed to send copies of this Order to
17 plaintiff and to the Honorable Robert S. Lasnik.

18 DATED this 23rd day of February, 2010.

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21 Mary Alice Theiler
22 United States Magistrate Judge